

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**ICOT HEARING SYSTEMS, LLC'S THIRD-PARTY COMPLAINT
AGAINST PROSPECTS DM INC.**

COMES NOW Defendant/Third-Party Plaintiff ICOT Hearing Systems, LLC (“ICOT Hearing”) and pursuant to Rule 14 of the Federal Rules of Civil Procedure files this its Third-Party Complaint against Third-Party Defendant Prospects DM Inc. (“Prospects DM”), showing the Court as follows:

PARTIES AND JURISDICTION

1.

Plaintiff Todd C. Bank (“Plaintiff”) originally filed this action against Defendant ICOT Hearing and ICOT Holdings, LLC asserting claims for damages under the Telephone Consumer Protection Act (“TCPA”) arising out of calls regarding ListenClear.

2.

ICOT Hearing is a Georgia corporation and is authorized to transact business in the State of Georgia.

3.

Prospects DM is a Canadian corporation with a registered office address at 20 Hughson St. S Hamilton, ON L8N 2A1. Prospects DM also has an office in the United States at 701 Seagaze Drive, Suite D, Oceanside, California 92054. Prospects DM may be served with process through the rules of the HAGUE Service Convention.

4.

This Court has subject matter jurisdiction because of the Complaint filed by Plaintiff.

5.

Prospects DM is subject to the personal jurisdiction of this Court.

6.

Venue is appropriate in this Court based on the underlying action.

FACTUAL BACKGROUND

7.

Plaintiff alleges that Defendants are liable under the TCPA and New York General Business Law for telephone calls that Plaintiff and the putative class received.

8.

Among other things, Plaintiff alleges that Defendants are liable under the TCPA by initiating telephone calls to residential and cellular telephone lines. Plaintiff also alleges that Defendants are liable under the TCPA by initiating telephone calls to persons whose telephone numbers were listed on the Do Not Call Registry.

9.

Plaintiff also alleges that Defendants violated New York General Business Law Section 399-p(3)(a).

10.

ICOT Hearing entered into an agreement with Prospects DM, a marketing company, to perform certain marketing activities related to the sale of hearing aids.

COUNT I - Implied and Equitable Indemnity and/or Contribution

11.

ICOT Hearing realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

12.

If ICOT Hearing is found liable for all or any portion of the claims raised by Plaintiff, then ICOT Hearing is entitled to a judgment that Prospects DM is liable to Plaintiff for equitable contribution, equitable indemnification, or other equitable apportionment.

13.

Prospects DM was responsible for being compliant with the TCPA and state law in conducting its marketing services.

14.

If Plaintiff sustained any injuries and/or damages as a result of calls that were not compliant with the TCPA or state law, it was due to the fault of Prospects DM, and not of ICOT Hearing.

15.

By virtue of the foregoing, ICOT Hearing is entitled to recover from Prospects DM any damages awarded to Plaintiff and against ICOT Hearing for negligence

imputed to ICOT Hearing for injuries arising out of failure to ensure compliance with the TCPA.

16.

ICOT Hearing is entitled to indemnity implied by law, and/or by equity and good conscience.

17.

Accordingly, Prospects DM is liable to ICOT Hearing, in an amount to be proven at trial, for any amounts that Plaintiff may recover from ICOT Hearing, and all costs associated with this action, including reasonable attorneys' fees, together with such further and other relief as this Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, ICOT Hearing prays that:

- (a) ICOT Hearing have a trial by jury on all issues so triable;
- (b) This Court order Prospects DM to indemnify ICOT Hearing for any and all costs, losses, liabilities, expenses (including attorney's fees), judgments, and amounts actually and reasonably incurred in this action based on the conduct of Prospects DM;
- (c) That this Court award ICOT Hearing any and all further relief as it deems just and proper.

Respectfully submitted, this 12th day of June, 2018.

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

/s/Mark C. Stephenson

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New York Bar No. MS2518

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